XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(35)

मामला क्रमांक ....CrA.NO.1148.... सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT: Antoram Gond, S/o Pustam Gond, aged 35 years, R/o Village Seenapali, P.S. Devbhog, District Raipur.

-Versus-

RESPONDENT: State of Madhya Pradesh (now Chhattisgarh), Through P.S. Devbhog, Distt. Raipur, (M.P.) (now Chhattisgarh).

(Criminal Appeal under Section 374 (2) of the Cr.P.C.)

Division Bench: -
Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ.

11-10-2007:-

Shri Abhay Tiwari, counsel for the appellant.

Smt. Anju Ahuja, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais*.

Sunil Kumar Sinha, J.

This appeal is directed against the judgment of conviction and order of sentence dated 23-1-99 passed by the Additional Sessions Judge (Special Judge, NDPS), Raipur, in S.T. No.104/98 whereby the appellant has been convicted under Section 302 of the I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 6 months.

Brief facts are that on 10-12-97 at about 7 a.m. the deceased namely, Pichadu Ram (a young boy aged about 15 years) was present in the house of Chandrabhan (PW-7). The parents of the deceased died 12-

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13 years prior to the date of the incident, therefore, the deceased, who was orphan, was residing in the house of Chandrabhan, who was looking after the deceased. At that time, accused Antoram was also present in the house of Chandrabhan and the wife of Chandrabhan namely, Itli Bai (PW-8) was also present in the house. Chandrabhan, with intention to extract cow's milk, said to the deceased to untie the calf which was tied in a room. As soon as, the deceased entered the room to untie the calf, the accused all of a sudden, gave repeated Tangia blows on the deceased. The incident was witnessed by Itli Bai (PW-8). She raised cries, on which her husband Chandrabhan (PW-7) also went inside the room and saw the deceased, who had died instantaneously. The accused tried to run away from the place of occurrence, on which he was chased by Chandrabhan, who was also shouting and he was caught by the villagers namely, Gulab Patel (PW-2) and Bhanuram (PW-3). When they asked the accused, the accused made extra judicial confession before them. Chandrabhan went to the village Kotwar Bhola Ram (PW-1) and thereafter they went to the Police Station to lodge the report Ex.P/13.

After receiving such information, the investigating officer left for the scene of occurrence. He gave notice (Ex.P/1) to the Panchas and prepared inquest (Ex.P/2) on the body of the deceased. After taking the accused/appellant into custody recorded his memorandum Ex.P/3, in pursuance of which Tangia (weapon of offence) was seized under Ex.P/4. Plain soil and blood stained soil were seized under Ex.P/5. One blood stained Lungi was seized from the place of occurrence under Ex.P/6. Another Lungi was also seized from the accused under Ex.P/7. The dead body of the deceased was sent for postmortem examination to the Primary

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Health Centre, Devbhog under Ex.P/8 where Dr. K.C. Uraon (PW-6) conducted postmortem on the dead body and prepared his report under Ex.P/9. He noticed following injuries on the dead body of the deceased:-

(i) One chop wound on the front side of the neck, horizontally placed, margins were sharp, size 13 cm x 5 cm x 3 cm, at right end and 1 cm at left end of wound, blood stains were present around the wound, right jugular vein and right carotid artery were cut, clotted blood was present, size of stain was 15 cm x 10 cm at the back portion of the neck,

(ii) One incised wound situated at left side of first injury, size was 4 cm x 0.5 cm x 0.5 cm.

According to his opinion, cause of death was cardio respiratory arrest on account of excessive haemorrhage and shock due to injuries on the neck.

After completion of usual investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Gariyabandh, who in turn committed the case to the Court of Sessions Judge, Raipur, from where case was received on transfer by the Additional Sessions Judge (Special Judge, NDPS), who conducted the trial and convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

Conviction of the accused is based on the testimony of PW-8 Itli Bai supported by the evidence of PW-7 Chandrabhan as also on the evidence

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of Bholaram (PW-1), PW-2 Gulab Patel and Bhanuram (PW-3). PW-8 Itli Bai is an eyewitness whereas Bholaram (PW-1), PW-2 Gulab Patel and Bhanuram (PW-3) are the persons before whom the accused/appellant made extra judicial confession.

Learned counsel for the accused/appellant argues that evidence of PW-8 Itli Bai is not reliable, as she has given unnatural version. He also argues that extra judicial confession has also not been proved in this case.

On the other hand, learned State counsel opposes the arguments and supports the judgment of conviction and order of sentence passed by the trial Court.

We have carefully considered evidence of PW-8 Itli Bai. She has deposed that on the fateful day she was washing utensils in her house. Pichadu Ram (deceased) was also present in the house. Her cow was there in her room and calf of the cow was kept in another room. Her husband Chandrabhan, with intention to extract cow's milk, took utensils from her and he said to the deceased to untie the calf. The deceased went inside Kotha (a place where calf was tied) where the appellant was also present. At that time, this witness heard a noise and when she saw towards Kotha, she could witness that the appellant was assaulting the deceased with Tangia. She has deposed that the appellant was assaulting the deceased on his neck and blood was coming out from the neck. On hearing cries, her husband Chandrabhan also came over there and her son Santosh (PW-9) and her son-in-law Jagannath (PW-10) had also gathered on the place of occurrence. Seeing this, the appellant ran

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away from the place of occurrence. She has specifically stated that on account of receiving injuries the deceased has instantaneously died at the place of occurrence itself. In cross-examination, defence has tried to make out a case that this witness has not seen the occurrence. Question was asked to her that she could not see the incident from outside, which took place inside Kotha. But this witness has categorically stated that Kotha was open from front side and she was able to see the incident from the place where she was sitting because place of incident was clearly visible from the said place. She has denied that she is not giving correct version and net result of cross-examination is that no material has been brought on record to disbelieve evidence of this witness. Moreover, version of this witness is supported by her husband PW-7 Chandrabhan who has also deposed that he heard cries of his wife, he reached on the spot and saw that dead body of the deceased was lying on the place of occurrence. He has also deposed that he had seen the appellant running away from the place of occurrence. He has further deposed that he has chased the appellant and has tried to catch him and was raising cries saying that he has killed Pichadu Ram. He has further stated that he, PW-2 Gulab Patel and Bhanuram (PW-3) had caught the appellant on the way. He has further stated that he has told the story to Kotwar and Sarpanch of the village. The above evidence of these two witnesses is supported by the evidence of PW-2 Gulab Patel and Bhanuram (PW-3) before whom the accused made extra judicial confession.

PW-2 Gulab Patel has stated that he heard that Chandrabhan was crying to catch Antoram saying that he has killed the deceased. Antoram was running. He was being chased by Chandrabhan. Antoram was

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running away from the village. He along with Bhanuram and many other persons of the village had also chased Antoram and they had caught him. At that time he was empty handed. He has specifically deposed that at that time Antoram made extra judicial confession before them that he had cut the deceased and for this reason he was running from the village. The above evidence, particularly regarding extra judicial confession is supported by the evidence of Bhanuram (PW-3).

In cross-examination of these witnesses and also in cross-examination of Bholaram (PW-1) before whom also the appellant made extra judicial confession, defence has not been able to bring any circumstance by which their evidence may be disbelieved. Their evidence appears to be cogent and reliable on the point of extra judicial confession.

Therefore, on over all analysis of the entire evidence adduced by the prosecution, it does not appear that evidence of PW-8 Itli Bai was not reliable and reliance cannot be placed on her evidence. The evidence of PW-8 Itli Bai is fully reliable whose evidence is supported by the evidence of her husband and also by the evidence of the doctor who had conducted postmortem on the body of the deceased. The trial Court has rightly relied upon evidence of these witnesses for convicting the accused/appellant for commission of crime in question. Moreover, as an additional piece of evidence, there is also extra judicial confession of the appellant, as has been discussed above.

Therefore, in the opinion of this Court, the trial Court has not committed any error of law while convicting the accused/appellant on the

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Barve	basis of above evidence on record. The argument advanced by learned counsel for the accused/appellant cannot be accepted. Conviction is based upon reliable, cogent and clinching evidence, which does not require any interference by this Court. The appeal has no merit, same is liable to be dismissed and it is accordingly dismissed. Sd/- L.C. Bhadoo Judge	Sd/- Sunil Kumar Sinha Judge